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UNCLAS SECTION 01 OF 13 KUALA LUMPUR 000372

SIPDIS

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TAGS: [PHUM](#) [KCRM](#) [KWMN](#) [SMIG](#) [KFRD](#) [ASEC](#) [PREF](#) [ELAB](#) [MY](#)

SUBJECT: MALAYSIA SIXTH ANNUAL TRAFFICKING IN PERSONS REPORT

REF: A. STATE 3836

1B. 05 KUALA LUMPUR 3792

11. (SBU) SUMMARY AND INTRODUCTION: Malaysia is a destination and, to a lesser extent, a transit country for men and women trafficked for the purposes of sexual exploitation and forced labor. Women from the People's Republic of China, Indonesia, Thailand, Philippines and Vietnam are trafficked to Malaysia for commercial sexual exploitation. Additionally, some economic migrants from countries in the region who work as domestic servants and as laborers in the construction and agricultural sectors face exploitative conditions in Malaysia that meet the definition of involuntary servitude.

12. (SBU) There are no reliable statistics revealing the total number of women trafficked into Malaysia. Foreign embassies and NGOs report that in 2005, at least 500 trafficking victims were rescued and repatriated. During the first nine months of 2005, over 4,600 foreign women were arrested and detained for prostitution, compared with over 5,700 arrested during all of 2004. According to the government-funded National Human Rights Commission (Suhakam), a significant number of these women were probable TIP victims.

13. (SBU) The government recognizes that trafficking is a problem and has taken significant steps to combat it. Senior officials have expressed their support for anti-TIP programs, including comprehensive anti-TIP legislation and TIP victim identification training for police and immigration officials. In November 2004, the government signed an ASEAN declaration calling for greater regional cooperation against trafficking in persons. In December 2004, the government hosted the signing of a Mutual Legal Assistance Treaty with eight other ASEAN countries to improve regional cooperation and prosecution of transnational criminal activities including trafficking. Also in December, the women's affairs minister announced her intent to establish of the first shelter specifically for foreign women who are victims of trafficking.

14. (SBU) Government implementation of these steps has lagged, however. According to Suhakam, the government has not significantly improved its anti-TIP actions since late-2004. Malaysia lacks comprehensive anti-trafficking legislation that would enable officials to identify and shelter victims, and to prosecute traffickers under a single criminal statute. The government has not taken the legal steps necessary to establish the government-run shelter announced by the women's minister. While final statistics for 2005 are not yet available, convictions of traffickers under the penal code are down from the previous year.

15. (SBU) The government should draft and enact a comprehensive trafficking law that recognizes trafficked men and women as victims and provides them with shelter, counseling and repatriation assistance. The government should also systematically screen foreign prostitutes and illegal migrants, in order to identify and provide care for trafficking victims in their midst. In addition, the Ministry of Women, Family and Community Development (MWFC) should fulfill its December 2004 undertaking to establish one or more dedicated shelters for foreign trafficking victims.

16. (SBU) The Embassy has urged the MWFC to establish one or more shelters and stronger legal protections for victims of trafficking. We are encouraging the ILO and other international NGOs to be more proactive in TIP programs in Malaysia and are partnering with local NGOs to expand the infrastructure and resources required to respond effectively to the needs of victims. We have also offered to provide the USG's TIP victim identification expertise to police and immigration officials. The response from the Malaysian government to these proposed initiatives has been positive and cooperative.

17. (SBU) We believe that the government of Malaysia does not fully comply with the minimum standards for the elimination of trafficking. The Malaysians have made significant efforts in previous years to bring themselves into compliance with minimum standards. However, they have not provided evidence of increasing efforts to combat severe forms of trafficking over the previous year. We therefore recommend that Malaysia be moved from Tier 2 to Tier 2 Watch List in the 2006 Trafficking in Persons Report. The placing of Malaysia on the Watch List should assist us in communicating to the government of this moderate, Muslim-majority democracy the importance with which we regard the need for it to continue to address its trafficking issues. End Summary and Introduction.

18. (U) Embassy's submission for the 6th Annual Trafficking in Persons (TIP) Report for Malaysia follows. Responses are keyed to paras 21-25 of ref A. Embassy's point of contact for TIP is political officer Jeffrey Hilsgen (phone: 603-2168-4831, fax: 603-2168-5165, email: hilsgenjg@state.gov). Per the request in para 20 of Reftel, to date the Embassy has spent the following time on the TIP report: FS-1: 12 hours; FS-4: 75 hours; FSN: 10 hours.

19. CHECKLIST (PARA 21)

1A. A. (SBU) Malaysia is a target destination for crime syndicates trafficking women and girls into the country for the sex trade. To a much lesser extent, Malaysia is also a country of origin and transit. While there are no reliable statistics revealing the total number of women trafficked into the country, estimates can be made drawing from different sources. Foreign embassies and NGOs report that in 2005, at least 500 trafficking victims were rescued and repatriated. During the first nine months of 2005, 4,678 foreign women were arrested and detained for suspected involvement in prostitution, compared with 5,783 arrested during all of 2004. Chinese nationals accounted for the largest percentage of such arrests (more than 40%), followed by nationals of Indonesia (25%), Thailand (17%) and the Philippines (10%). According to the government-funded National Human Rights Commission (Suhakam) and involved NGOs, a significant number of these women were probable TIP victims.

(SBU) While little verifiable information exists regarding the number of Malaysian women trafficked to other countries, the GOM claims that no Malaysian women were trafficked outside the country in 2004 (the latest period they reviewed). GOM statistics state that 20 Malaysian women were arrested in 2004 for immigration violations in various countries. According to the GOM, none of the women claimed to be trafficking victims or gave any indications they had

been trafficked. Our conversations with local NGOs indicate that fewer than 100 Malaysian women are trafficked abroad each year, and that the number has declined in recent years.

(SBU) Our sources of information on TIP in Malaysia include the Royal Malaysia Police (RMP), the Attorney General's Chambers, the Immigration Department, the Ministry of Home Affairs, the Ministry of Internal Security, the Ministry of Foreign Affairs (MFA), the Ministry of Women, Family and Community Development (MWFC), the Malaysian Chinese Association (MCA, an ethnic-Chinese political party in the ruling coalition), Suhakam, several foreign diplomatic missions, and a number of local NGOs, including the Malaysian Bar Council. These sources were forthcoming with credible information on TIP.

1B. (SBU) Malaysia is a destination and, to a far lesser extent, a transit country for men and women trafficked for the purposes of sexual exploitation and forced labor. Collectively, as many as several thousand women from the People's Republic of China, Indonesia, Thailand, Philippines and Vietnam are trafficked to Malaysia for commercial sexual exploitation. Additionally, some economic migrants from countries in the region who work as domestic servants and as laborers in the construction and agricultural sectors face exploitative conditions in Malaysia that meet the definition of involuntary servitude.

(SBU) A small number of Malaysians are trafficked annually to other countries, though recent data suggest that the number has decreased to negligible levels. According to NGO sources, young Malaysian ethnic Chinese women are the primary targets of traffickers recruiting prostitutes in Malaysia. For religious and/or cultural reasons, trafficking of ethnic Malay or ethnic Indian women is infrequent. According to most reports, Malaysian Chinese women are lured by word of mouth and by personal contacts connected to mainland Chinese criminal syndicates with international connections. Promises of high-paying jobs and freedom from the restrictions of Malaysia's generally conservative society are the main motivating factors.

(SBU) During meetings with senior USG representatives in 2005, Malaysian government officials expressed strong support for combating trafficking in persons. While the government views the issue of trafficking both as a stand-alone problem and as part of the larger challenge of border security and illegal migration, Malaysia does not fully comply with the minimum standards for the elimination of trafficking. According to the government funded National Human Rights Commission (Suhakam), the government has not significantly improved its anti-TIP actions since Suhakam's publication in January 2005 of a national plan of action to combat trafficking. The government has taken steps to combat trafficking and has a broad array of criminal laws available to it to deter and punish traffickers, but Malaysia lacks comprehensive anti-trafficking legislation that would enable officials to identify victims, shelter them, and prosecute traffickers under a single criminal statute. Compared to 2004, prosecutions and convictions of traffickers under the penal code declined during the first nine months of 2005.

(SBU) The majority of persons trafficked into Malaysia for sexual exploitation come from China, Indonesia and Thailand, with smaller numbers coming from the Philippines, Vietnam, India and Cambodia, Burma and Laos. Anecdotal evidence indicates that numbers of victims coming from neighboring ASEAN countries have remained relatively constant over the last few years. The number and patterns of victims coming from source countries tend to reflect GOM immigration and visa policies. For example, China has grown as a source country in recent years due to a more liberal Malaysian visa policy that reflects growing economic ties and GOM efforts to encourage tourism and university enrollment from Chinese students. China has become the largest and fastest-growing source country for prostitutes in Malaysia; many of these Chinese women and girls are likely TIP victims.

(SBU) The Royal Malaysia Police (RMP) compiles statistics on arrests of foreign women with suspected involvement in prostitution, broken down by nationality. The Immigration Department's enforcement division also collects data on trafficking cases. Malaysian authorities do not adequately distinguish illegal migrants from trafficking victims. Law enforcement officials assert that the great majority of the foreign women arrested for prostitution in Malaysia entered the country voluntarily and with valid travel documents. However, surveys by Suhakam and interviews with Indonesian, Thai and Philippine embassy officials indicate that as many as fifty percent of foreign women arrested for prostitution are possible trafficking victims. According to the Thai embassy's anti-TIP officer, nearly all of the Thai women arrested for prostitution claim to be TIP victims during interviews conducted by embassy officials.

(SBU) To avoid detection by law enforcement authorities, trafficking victims engaged in prostitution are often confined to the premises of their establishments, whether it is a place of entertainment or a privately owned apartment or home. Some women are taken out under strict supervision to meet customers at hotels or private residences. Trafficking victims are kept compliant through involuntary confinement, confiscation of travel documents, debt bondage, and physical abuse or threat of abuse, according to NGO representatives, academics, and foreign consuls.

(SBU) In terms of prevention, in 2002 and 2003 the government took steps to toughen the criteria for young foreigners seeking student visas, to monitor individuals with student visas more carefully to ensure they were actually attending school, and to scrutinize more closely young foreign women entering the country on special two week "social passes." It has also stepped up border detection for smuggling, illegal migration, and drug and people trafficking.

(SBU) There is no evidence of widespread tolerance or complicity in TIP by government authorities, though accusations of more general corruption, particularly at the local police and immigration levels, exist. Foreign diplomatic missions report good cooperation on TIP from law enforcement authorities at the federal level, but some NGOs have alleged that outside of Kuala Lumpur they have received less cooperation. Several NGOs report that that police cooperation with NGOs and other groups against traffickers has improved.

1C. (SBU) Government resources are overwhelmed by the sheer magnitude of illegal migrants entering the country. Analysts estimate that over one million illegal migrants live in Malaysia. Law enforcement agencies lack adequate resources to deal with the influx, and criminal syndicates have been quick to exploit this weakness. TIP victims are lost in the crowd of illegal migrants from China, Indonesia and Thailand. The Indonesian embassy estimates that only a small minority of the 70,000 Indonesian workers in Sabah are legally registered with the GOM. Immigration authorities say they do not have the manpower or language resources to question and distinguish trafficking victims from illegal migrants, or to properly assist them when they are identified. The NGO community is small, poorly funded, and often does not have the capacity to provide for victims even when the police seek their assistance.

1D. (SBU) Suhakam in 2004 conducted a comprehensive review of Malaysia's response to TIP. A 159-page report published in January 2005 included interviews with victims, police, immigration, prison authorities, ministries involved in TIP, the Attorney General, foreign embassies, NGOs and IOs. The report called for wide-ranging measures to combat trafficking and a more human rights-centered approach for protecting victims. The report was widely publicized in the local media and generated positive commentary from the public, NGOs and government officials. The state-influenced media gives extensive coverage to law enforcement raids against brothels, massage parlors, and other locales where foreign women and their pimps have been arrested for suspected involvement in

prostitution. The government does not systematically publish detailed statistics about its arrests, prosecutions and convictions of pimps and traffickers. The GOM has provided this and related information to the Embassy upon request. The government has also provided a detailed written response to our annual trafficking in persons report.

10. PREVENTION (PARA 22)

1A. (SBU) In 2004 the government signed the ASEAN Ministerial Declaration against Trafficking in Persons. Government officials regularly acknowledge that Malaysia is a destination and transit country and assert that they are committed to combat TIP comprehensively. They view trafficking as a problem connected to organized crime, prostitution, smuggling and illegal migration, and recognize that many young foreign women involved in prostitution in Malaysia are victims of TIP. However, some also assert that many prostitutes working in Malaysia are here out of choice and that these women should be prosecuted as such and deported as illegal migrants. Government officials have expressed concern that some women willingly involved in vice claim to be TIP victims when arrested. The government acknowledges that it has difficulty in distinguishing TIP victims from foreign sex workers who entered Malaysia willingly, as many of these women do not speak Bahasa or English and choose not to file charges against their traffickers.

1B. (SBU) The RMP, the Immigration Department, the Ministry of Home Affairs, the MWFC, the MFA, and the Attorney General's office are the government agencies involved in anti-trafficking efforts. Suhakam, which is funded by the government, and the MCA, the second-largest party in the governing coalition, are also active in anti-TIP efforts.

1C. (SBU) MCA publishes warnings in its Chinese-language publications and makes public statements to caution potential victims about overly lucrative job offers abroad. The MCA reported that the number of Chinese victims seeking assistance from its offices declined to 39 in 2005, compared with 56 in 2004 and 75 in 2003. The government has not directly sponsored anti-trafficking campaigns.

1D. (SBU) The government supports some trafficking prevention programs. Currently, the MWFC operates "rehabilitation" homes for women and girls (under 18) who have been determined by the courts or their families to be at risk of engaging in prostitution or other vice activities.

(SBU) Malaysian women comprise more than half of the university student population, account for 44% of the nation's labor force, and hold significant high-profile positions in government, NGOs and the private sector. In 2004, the Ministry of Women's Affairs and Family Development was merged with the Ministry for Social Welfare to create an expanded Ministry of Women, Family and Community Development. The women's affairs minister secured passage in August 2001 of a constitutional amendment barring sex discrimination. In 2004, a women NGO activist who maintains a shelter for abused women and TIP victims was appointed to the royal commission on police reform.

(SBU) In 2004, Suhakam drafted a TIP national plan of action with support from the IOM. Among other things, the plan recommended that the government fund shelters for foreign TIP victims that include reintegration programs. In December 2004, the women's affairs minister announced the cabinet's approval to open a shelter specifically for "foreign women who are victims of trafficking." Prime Minister Abdullah attended the announcement, signaling his support. The women's minister subsequently informed us that amendments to existing laws, or a new comprehensive anti-TIP law, had to be enacted prior to government establishment of a TIP victim shelter; current laws do not distinguish between TIP victims and illegal migrants engaged in vice activities. In 2005, the MWFC discussed launching a nationwide campaign in

collaboration with various NGOs to increase public awareness on trafficking through seminars, workshops and dissemination of brochures. The campaign is supposed to target youths and school children and serve as a capacity-building program for law enforcement and policy makers to heighten their awareness of the problem. It has not yet been launched.

1F. (SBU) Government and NGO cooperation on trafficking is uneven and ad hoc, both because the government does not have established procedures for handling trafficking victims and because NGOs do not have the resources to care for more than a few victims at any given time. In some cases victims are released into the custody of their embassies, which maintain limited shelter capabilities. In other cases, police ask private shelters run by NGOs to accept TIP victims. Foreign embassies and several NGOs report good cooperation with police and immigration officials in securing immigration passes and shelter for foreign women workers who are victims of trafficking or physical abuse. Police officers have been designated as liaisons with the MCA's Social Services and Welfare office and other NGOs on cases involving trafficking and other victims.

(SBU) Using USG funding and with the assistance of the IOM, local NGO Tenaganita plans to establish Malaysia's first dedicated shelter for foreign TIP victims in March 2006. Tenaganita intends to obtain the formal approval of police, immigration and Women's Ministry officials for the shelter, as it ramps up operations. The Indonesian embassy's shelter in Kuala Lumpur has a capacity of 80 persons, but in mid-February it housed 140 individuals, including a 15-year-old girl recently trafficked into Malaysia from Sumatra for sexual exploitation. Approximately 80% of the of the shelter's occupants are typically TIP victims, according to the embassy's lead anti-TIP official. Of that number, about 80% are laborers escaping exploitative conditions, with the remainder are persons trafficked for sexual purposes.

1G. (SBU) The Malaysian government views border control as a national security issue because of concerns related to terrorism, narcotics, public health, economic security, and social stability, as well as trafficking. For all of these reasons, the government is making a strong effort to monitor the country's borders. Malaysian passports issued in the country are fitted with a microchip that stores the biographic data and photograph of the passport holder to prevent forged alterations and photo substitution of lost or stolen passports. As part of its crackdown on vice in 2002, the government instituted tougher criteria for foreigners seeking student visas and increased border scrutiny of young persons, particularly from China, entering Malaysia on special "social passes." In 2005 the government began a large-scale program to issue immigration "smart cards" to permanent residents and legal workers in Malaysia. The smart cards electronically store biographic data, fingerprints and the immigration status of the cardholder.

(SBU) Malaysia's 3000-mile-long coastline creates a tremendous challenge for Malaysia's security forces. In addition, the long, heavily forested land border that East Malaysia shares with the Indonesian province of Kalimantan cannot be patrolled adequately. The government nonetheless makes a serious effort to control these borders. Reports of organized criminal activity to facilitate the entry of illegal aliens are investigated by local law enforcement authorities, and in some cases suspected perpetrators have been detained under Malaysia's Internal Security Act (ISA), the Emergency Ordinance and the Restricted Residence Act, all of which allow for extended periods of detention without charge. In January 2005, the press reported that the police used the ISA to detain nine persons involved in forging Malaysian identity cards. Seven of the individuals worked for the Malaysian national registration office and the remaining two were members of criminal syndicates. In both 2003 and 2004, according to government statistics, approximately 4,000 foreign nationals were refused entry into Malaysia due to suspicion of owning fake or falsified travel documents.

11H. (SBU) A number of governmental interagency groups address TIP and related issues. The MFA leads an interagency group on transnational organized crime, which meets monthly and has been charged with addressing the trafficking issue from a regional perspective. The Home Affairs Ministry supports another interagency group, the Cabinet Committee on Illegal Immigrants, which coordinates efforts against illegal migration, including TIP. Deputy Prime Minister Najib, who also holds in his portfolio oversight of the National Human Rights Commission, chairs the Cabinet Committee on Illegal Immigrants.

(SBU) The Home Affairs Ministry also maintains a special interagency task force targeting vice that includes officials from the RMP, Immigration, and the Ministries of Home Affairs, Housing, Education, and Tourism. According to NGOs, this task force meets occasionally, but its anti-vice contributions remain unclear. An additional border security group, the Land Entry Points Coordinating Committee, reviews and improves the operational aspects of border control. A similar group also coordinates efforts to improve service, security and efficiency of air-entry points. In the state of Sabah, on Borneo, an interagency Federal Special Task Force focuses primarily on illegal migration, but also tries to prevent TIP. The task force includes representatives from the RMP, Immigration, the national security arm of the Prime Minister's Department, and the armed forces. A separate agency under the Home Affairs Ministry, the Anti-Corruption Agency, investigates cases of public and private corruption. A royal commission on police reform conducted a review of police practices, including allegations of police corruption and graft, starting in 2004, issuing 125 recommendations in April 2005. In early 2006, the Prime Minister ordered the Attorney General to complete the legal groundwork necessary to create a permanent independent commission to hear complaints against the police.

(SBU) On the international level, TIP is a component of the Eight Priority Areas of Cooperation under the Work Program of the ASEAN Plan of Action to Combat Transnational Crime. In 2004, Malaysia signed a joint ASEAN Declaration to Combat Trafficking in Persons. The declaration called for greater regional counter-TIP cooperation and asked member states to undertake actions to respect and safeguard the dignity and human rights of victims of trafficking. In 2005, Malaysia convened a meeting of ASEAN attorneys general to sign an ASEAN-wide mutual legal assistance treaty (MLAT) designed to combat transnational crimes, including TIP, more effectively.

In May 2002, Malaysia, the Philippines and Indonesia signed the "Agreement on Information Exchange and the establishment of Communication Procedures" to establish a framework for cooperation on border and security incidents, transnational crimes (including trafficking in persons), and other illegal activities. Subsequently, Cambodia, Brunei and Thailand acceded to the agreement. Malaysia has been an active participant in the "Bali Process" initiated by Australia and Indonesia. In 2003, Malaysia hosted two follow-up legislative workshops on People Smuggling, Trafficking in Persons and related Transnational Crime.

(SBU) Malaysia shares intelligence on trafficking syndicates and related dangers with the UK, Australia and Interpol. In late 2002, the Sabah state government entered into an agreement with the government of the Indonesian province of East Kalimantan to cooperate on a range of shared cross-border challenges, including finding and arresting human traffickers and dismantling syndicates. In 2004, Malaysia ratified the UN Convention against Transnational Crime; it is considering signing the supplementary protocol against trafficking in persons. Malaysia is expected to conclude an MLAT with the U.S. in 2006.

11J. (SBU) In October 2004, Suhakam, with support from the IOM and the Embassy, drafted a national anti-TIP plan of action for consideration by the government. In preparing the plan, Suhakam consulted with government agencies and NGOs involved with TIP, foreign embassies from source countries for TIP

victims found in Malaysia, TIP victims and foreign experts on TIP such as the IOM. The national plan of action was submitted to the government for consideration in November 2004. The government has not yet acted on the anti-TIP plan's proposals, nor has it designated a lead ministry for counter-TIP programs.

11. INVESTIGATION AND PROSECUTION OF TRAFFICKERS (PARA 23)

A/B/C. (SBU) In 2002, the government amended the criminal code to include extensive anti-trafficking language. According to one expert on anti-trafficking legislation, it is now "a strong law with solid anti-trafficking provisions with regard to trafficking for sexual exploitation." Using the provisions, police regularly raid brothels and arrest pimps and enforcers. However, only two such individuals were convicted under the penal code during the first nine months of 2005. When the police lack sufficient criminal evidence to arrest suspected pimps and traffickers under the Penal Code, they often utilize the Restricted Residence Act, one of Malaysia's "preventive detention" laws, to incarcerate them. Another such law, the Emergency Ordinance, is regularly used against criminal syndicates that transport, harbor and otherwise facilitate the illegal entry of foreigners into Malaysia.

(SBU) While Malaysia does not have a unitary law specifically prohibiting trafficking in persons, most of the acts involved in trafficking in persons as defined by the UN Protocol are criminal offenses, including recruitment, transportation, transfer, wrongful restraint, harboring, receipt of persons by means of threat or use of force, or other forms of coercion fraud, abuse of power, or forced sexual exploitation, slavery, or servitude. In 2004, the government began to use new provisions to the 2001 Anti-Money Laundering Act to seize the assets of businesses involved in illicit activities, including trafficking. Following is a summary of the legal provisions most commonly used in Malaysia against traffickers:

-- Constitution, Articles 6(1) and 6(2): Prohibit slavery and forced labor.

-- Penal Code, Sections 340-348: Address "wrongful confinement" of a person against his/her will. Punishments include maximum prison terms from one to three years and a fine.

-- Penal Code, Section 372: Amended in 2002 to include stronger anti-trafficking language, addresses exploitation of any person for purposes of prostitution. Exploitation is defined to include selling, hiring, or otherwise obtaining possession of any person with the intention to employ or use the person for the purpose of prostitution (either inside or outside of Malaysia) or knowing or having reason to believe that the person will be so employed or used. Section 372 expands the offense of exploitation to include using false pretense or deceitful means to bring into or take out of Malaysia any person; harboring or receiving any (exploited) person and wrongfully restraining any person in any place. Wrongfully restraining is further defined as withholding clothing or property, threatening the person with legal proceedings to recover any debt or alleged debt and detaining a person's identity card or passport. Punishment under this section of the Code includes a prison term, which may extend to 15 years, caning and a fine.

-- Penal Code, Section 372A: Provides the same penalties as section 372 for anyone who lives wholly or in part on the earnings of the prostitution of another person.

-- Penal Code, Section 373: Provides the same penalties as section 372 for anyone who keeps, manages or assists in the management of a brothel.

-- Penal Code, Section 374: Addresses unlawful compulsory labor and includes punishment by imprisonment for a maximum

one-year term and the possibility of a fine.

-- Immigration Act, Sections 55(A) and Sections 56(1)(d): Covers a wide spectrum of immigration violations related to illegal entry or entry under false pretenses. The Act also addresses "employing" and "conveying" illegal aliens. The Act was amended in 2002 to toughen significantly punishments for immigration violators. Those convicted of illegal entry face a fine of up to RM 10,000 (\$3,800) and/or a prison sentence of up to 5 years, and caning of up to a maximum of 6 strokes. The penalty for employing an illegal alien is a fine of between RM 10,000-50,000 (USD 7,900) for every illegal immigrant employed and/or a prison term of up to 12 months. An employer employing more than five illegal immigrants will be imprisoned from 6 months to 5 years and caned up to a maximum of 6 strokes. The penalty for "conveying" (trafficking) illegal immigrants is a fine of RM 10,000-50,000 for every individual trafficked. An individual convicted for trafficking more than 5 illegal immigrants will also be imprisoned for between six months and five years, and caned up to a maximum of six strokes.

-- Child Act (2001): Merges provisions from an array of diverse legislation pertaining to children and young persons (the Women and Girls Protection Act, the Juvenile Court Act, and the Child protection Act) into one law. The Act specifically prohibits trafficking of children and makes it an offense to sell, let to hire, or procure (by threat or intimidation by false pretense, fraud or deceit) any child (defined as anyone under the age of 18) for the purpose of sexual exploitation. Penalties for these offenses are a maximum prison term of 15 years and a maximum fine of RM 50,000 (USD 13,000). The Child Act also authorizes the police to provide protection and rehabilitation for children in need. A child in need is defined to include a child who "is being induced to perform any sexual act, or being in any physical or social environment which may lead to the performance of such act".

-- Passports Act: Criminalizes the forgery or alteration of travel documents (including passports, residence permits and visas). Also criminalizes false statements or misrepresentation used to gain illegal entry into Malaysia. Penalties range from RM 10,000-100,000 (\$2,600-\$26,000) fine, 5-10 years in prison, and six strokes of a cane.

-- Internal Security Act (ISA): Provides for detention up to two years without formal charge. According to the Home Affairs Ministry, the ISA has sometimes been used against individuals for threatening the security of the country by trafficking illegal immigrants or forging travel documents or work permits.

-- The Emergency (Public Order and Prevention of Crime) Ordinance: Used against persons, usually criminal syndicates that are involved in illicit activities (such as violent crime, document forgery and people smuggling), which threaten public order.

-- Restricted Residence Act (RRA): Allows the government to require individuals who are suspected of engaging in criminal activity including trafficking to move to a pre-determined location in the country and remain there under close police supervision. The RRA does not require a formal charge to be filed against the suspected individual. According to police data, the RRA was used significantly more often than the penal code to charge and detain suspected pimps and traffickers during 2005.

11D. (SBU) Federal law criminalizes prostitution and bans pornography, and the laws are vigorously enforced. Malaysians tend to be conservative on sexual issues. The 60% of the population that is Muslim is subject to Islamic laws that prohibit even "close proximity" between men and women who are not married to each other. The activities of the prostitute, brothel owner/operator, and enforcer are all considered criminal offenses, though clients are not generally prosecuted. The sex trade is largely underground.

It is visible only at two extremes: in nightclubs and bars that cater primarily to affluent foreigners; and in poor neighborhoods with large migrant populations.

1E. (SBU) Following amendments to different acts in 2001 and 2002, the government began to prosecute people involved in trafficking for the purposes of prostitution. According to the MFA, in 2002 the first trials and convictions under the amended sections 372, 372A and 372B of the Penal Code began to work their way through the courts, with 9 trials and 7 convictions. In 2003 there were 85 cases investigated, 31 prosecutions and seven convictions. According to RMP statistics, 28 persons were prosecuted (and two convicted) under Sections 372 and 373 of the Penal Code from January - September 2005, compared with 38 persons prosecuted (and 17 convicted) during all of 2004.

(SBU) When police lack sufficient evidence to convict a suspected pimp or trafficker, they use the Restricted Residence Act to detain the suspected individual. The Act allows the government to detain a suspected trafficker indefinitely, without due process of law. During the first nine months of 2005, 48 suspected traffickers were detained under the Restricted Residence Act, compared with 47 during all of 2004.

(SBU) According to the government, it detained "about 40" members of regional trafficking syndicates from 2000-2004 under the Internal Security Act (ISA). The suspected traffickers used Malaysia as a transit point for trafficking Chinese nationals to third countries. The government stated that 13 international trafficking syndicates were eliminated in these operations.

(SBU) Government officials, NGOs and legal analysts acknowledge that prosecution of trafficking perpetrators is complicated by the difficulty in producing credible evidence and by the lack of victim cooperation. Evidentiary barriers, the prosecution's burden of proof beyond a reasonable doubt, and pressure to produce convictions in a backlogged criminal justice system all work against effective prosecution of trafficking cases. Given these problems, the government has employed the ISA, the Emergency Ordinance and the Restricted Residence Act to detain or restrict the activities of people suspected of trafficking and alien smuggling activity.

1F. (SBU) The RMP reports that a number of large organized criminal syndicates, as well as a few smaller groups, traffic foreign women into Malaysia, using Malaysia either as the women's final destination or as a transit point to a third country. In 2005, there were numerous reports of prostitution rings broken up by police and syndicate members arrested for involvement in prostitution. Employment agencies are sometimes used as fronts for people smuggling and trafficking in persons. Sex tourism is not widespread in Malaysia, nor are there reports of marriage brokers fronting for traffickers.

1G. (SBU) As noted in para 8E above, the Malaysian government is actively investigating cases of trafficking. Police efforts to break criminal syndicates are complicated by layers of middlemen, some of whom reside outside Malaysia. Often trafficking victims, both Malaysians who have gone abroad and foreigners brought to Malaysia, may only know one middleman, who is probably using a false identity. In investigating cases of trafficking, police investigators attempt to question repatriated Malaysian victims as soon as they return, but the victims usually cannot or will not provide enough information for further investigation.

1H. (SBU) The government lacks the expertise to provide law enforcement officers with specialized training on how to investigate incidences of trafficking. It continues to take full advantage, however, of TIP training for law enforcement officers and prosecutors at ILEA Bangkok, as well as bilateral training on domestic violence sponsored by the USG in Malaysia. Police, prison and immigration officials also lack TIP victim identification expertise. In 2005, senior

police and immigration officials asked for USG-sponsored TIP victim identification training. The Embassy continues to seek funding and provision of such training for GOM law enforcement officials.

I. (SBU) The RMP cooperates with law enforcement agencies in neighboring countries whenever cross-border criminal incidents are being investigated. In May 2002, Malaysia, Indonesia and the Philippines signed an agreement to facilitate cooperation in addressing border and security incidents, as well as transnational criminal activities that include human trafficking. In late 2002, the Sabah state government entered into a formal agreement with the government of the Indonesian province of East Kalimantan to cooperate on a range of issues, including combating TIP and investigating trafficking syndicates. Malaysia actively participated in the Bali Process and has hosted two legislation workshops related to it. In early 2005, though a joint operation by the RMP and the British National Crime Squad, a Malaysian "snakehead" was arrested, tried and convicted of smuggling illegal Malaysian workers into the UK.

In April and October 2005, the RMP closely cooperated with an international NGO to raid several brothels in Johor, arrest one internationally active trafficker and rescue dozens of (primarily Thai) women. Thai police from Songkla visited Kuala Lumpur in February to conduct a joint cross-border TIP investigation with local police. Representatives from NGOs, as well as the Indonesian, Thai and Philippine embassies in Kuala Lumpur, characterize their cooperation with police as good. NGO and embassy officials emphasize the timely responses from police to tips about the locations of possible TIP victims.

J. (SBU) There have been no reports of extraditing persons charged with trafficking. Section 108A of the Penal Code allows Malaysian authorities to prosecute a Malaysian who commits or abets a crime in another country that would be deemed an offense under the Penal Code. Malaysia is a party to the ASEAN Mutual Legal Assistance Treaty, which is designed to facilitate and expedite regional cooperation in fighting transnational crime. Malaysian law does not prohibit extradition of Malaysian nationals.

K. (SBU) There have been no proven cases of tolerance or complicity in TIP by government authorities. Pockets of general corruption, particularly at the local police and immigration levels, exist.

L. (SBU) Although some low-level police and immigration officials likely receive bribes from brothel owners, pimps and traffickers, we are aware of no allegations that police officers or other government officials have engaged in trafficking.

(SBU) Most analysts assume that some trafficking-related corruption exists among law enforcement and immigration ranks, since some TIP victims have been known to pass through two or more ports of entry without travel documents. In April 2005, a government-sponsored independent police commission noted a rising incidence of police corruption. Included among the appointed commissioners were women activists active in the fight against TIP. The commission reported that disciplinary actions were initiated against 1,216 police personnel for corruption and other offenses during 2004, compared with 1,138 in 2003. Police offenses noted in the report included accepting bribes, theft, and rape; punishments included suspension, demotion and dismissal. The number of these officers involved in facilitating trafficking was not available. As noted above, the Prime Minister recently ordered the Attorney General to complete the legal groundwork necessary to create a permanent independent commission to hear complaints against the police.

If ultimately established, this commission could provide an effective venue for investigations into allegations of police complicity in trafficking.

M. (SBU) Malaysia does not have an identified child sex tourism problem, although the Indonesian, Thai and Philippine

embassies occasionally report interviewing victims under 18 years of age what have been trafficked for sexual exploitation.

¶N. (SBU) Malaysia signed and ratified ILO Convention 29 in 1957, ILO Convention 105 in 1958 (but renounced it in 1990), ILO Convention 182 in September 2000, and the UN Convention on the Rights of the Child in September 1995. Malaysia signed the UN Convention against Transnational Organized Crime in September 2002 and ratified it in 2004. The government has not signed the supplemental Protocol on the Sale of Children, or the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women.

¶12. PROTECTION AND ASSISTANCE TO VICTIMS (PARA 24)

¶A. (SBU) The government provides no shelter facilities dedicated exclusively to TIP victims, as these individuals are not recognized as victims under Malaysian law. Until Malaysia amends its existing laws or enacts comprehensive anti-TIP legislation, TIP victims will be routinely processed as illegal migrants and held in the country's prisons or illegal migrant detention facilities, prior to deportation. According to the RMP and foreign consuls, trafficking victims identified by the police are released on an ad hoc basis into the custody of a consular official and sent to a women's shelter instead of being kept in police lock-up. The Indonesian, Thai and Philippine embassies report that in 2005, RMP officers brought in many of the over 500 victims assisted by the embassies' respective shelter programs during the year.

(SBU) As of February 2006, the Indonesian embassy's shelter held 140 individuals, approximately 80% of whom were deemed TIP victims by embassy officials. Women's shelters run by other foreign embassies temporarily housed an additional 30-40 TIP victims per year. NGOs and police report that NGOs currently do not have the capacity to shelter more than 25-50 victims nationally, leaving the police few alternatives to housing victims in detention facilities. Owing to language barriers and limited police training, foreign trafficking victims are usually not recognized as victims and are treated as immigration offenders. HIV/AIDS screening is usually provided for individuals arrested for prostitution and for others who are identified as trafficking victims rather than illegal migrants. When trafficking victims are identified as victims prior to detention, they may be sent to a hospital for examination and released to their embassies for repatriation.

¶B. (SBU) Although NGOs do not receive government funding specifically to provide services to trafficking victims, the government provides general funding to 75 NGOs dedicated to women's welfare. These NGOs provide shelter for victims of rape and domestic violence, counseling, legal referrals, and job skills training. Three foreign embassies maintain shelters in Kuala Lumpur for citizens who have no place to take refuge. The Thai embassy's shelter is small and held no individuals as of February 2006, while the Indonesian embassy's shelter is by far the largest, with a (typically exceeded) capacity of 80. Many using the shelters are trafficking victims.

The MWFCF has introduced "women's centers" in each state for impoverished, abused and otherwise vulnerable women who may need shelter, counseling, and job skills training. The ministry currently operates five such shelters. The ministry stated in 2005 that one of these shelters could be quickly converted to house trafficking victims who need assistance, once Malaysian law allows the GOM to handle TIP victims as such.

¶C. (SBU) The government has not yet implemented a formal screening process to identify TIP victims and treat them accordingly. A Suhakam-designed TIP victim identification questionnaire was used briefly on a trial basis in 2005 at the Kajang women's prison. Both Suhakam and the prison's

director told us recently that it is no longer used, as Malaysian law does not allow special treatment for detained TIP victims.

1D. (SBU) Foreign TIP victims are often not recognized as victims and, if they are holding false travel documents or have been arrested for prostitution, are usually detained and deported. Illegal migrants (including some victims) who are caught by the Malaysian authorities without valid travel documents are held for a few days in police custody before being sent to immigration detention centers or prisons pending deportation. The period of detention varies widely, from a few days to several months. According to foreign consular representatives, the usual sentence is one or two months' imprisonment and a fine, followed by deportation.

1E. (SBU) The Malaysian government encourages victims to assist in the investigation and prosecution of trafficking, but reports that most victims are unwilling to testify or do not have sufficient information to assist in a prosecution. A trafficking victim may file a civil suit against a trafficker under Malaysian law, and there have been many cases of migrant workers filing such suits in cases where they were not paid the salary they were promised or put to work in abusive conditions that were contrary to their contracts. While there is no specific impediment to the victims' access to such legal redress, they are usually not able to obtain employment while the court considers their case, and so for economic reasons this type of action is not usually pursued. We are not aware of any victim restitution program.

1F. (SBU) Some foreign victims have access to legal counsel through the Legal Aid Center of the Malaysian Bar Council. Police say that most victims are unwilling or unable to provide enough information for criminal prosecution of the trafficker, and many simply want to return to their home country as soon as possible. One NGO reported that pimps and traffickers are often present in the courtroom during court proceedings to intimidate the victims, while another NGO reported in October that police allowed a trafficker to visit ten Thai trafficking victims in detention. The Malaysian government does not have a witness protection program in place for any prosecution witnesses. The Abduction and Criminal Intimidation of Witnesses Act of 1947 criminalizes the abduction of any person for the purpose of preventing their testimony and thereby obstructing justice. The police and Attorney General have advised that this is rarely used in trafficking cases. The courts have begun to experiment with video conferencing and videotaped depositions to provide protection to victims who are afraid to testify in court. As of February 2006, the necessary equipment was installed in several locations, but the program had not yet been initiated.

(SBU) According to an Indonesian embassy official, many Indonesian plantation workers in Sabah are detained on the plantations and forced to work for less than \$3 (i.e. RM8-10) per day. Under Malaysian law, victims of these forms of trafficking are entitled to seek compensation through the legal system and are eligible to remain in Malaysia while their legal suit is pending. In general, Malaysian courts have ruled in favor of the victims and in some cases imposed harsh prison sentences on the employer. However, such labor-related lawsuits may take months or even years to be adjudicated. Meanwhile, the victim is not allowed by the GOM to work and is typically left with insufficient means of financial self-support; they therefore often leave the country, rather than see their case through to completion.

1G. (SBU) The government does not currently provide special training for officials on how to identify or assist trafficking victims. Senior police and immigration officials have acknowledged that additional training and expertise are needed to improve identification and handling of trafficking victims. Police and immigration officials have asked the USG to provide additional such training to improve their anti-TIP capability, and we have requested funding for the training

(ref B). Outside of citizen services and repatriation training, Malaysian embassy and consulate staff abroad do not receive specialized training on how to assist trafficking victims. Malaysian police, immigration officials and public prosecutors have received training at ILEA on trafficking in persons, as well as USG-funded bilateral training on domestic violence.

¶H. (SBU) Repatriated Malaysian victims who do not have the support of family or friends are referred to the MWFCF for public assistance. Private groups, such as the MCA's welfare wing, also offer services to repatriated victims.

¶I. (SBU) MCA, the Bar Council, Tenaganita, Women's Aide Organization (WAO), and the International Federation of Women Lawyers (IFWL) are the Malaysian NGOs most active in working with trafficking victims. In 2004, the IOM provided Assistance to Suhakam to draft a national plan of action to combat TIP. In 2005, the IOM and Tenaganita submitted a project proposal to the Embassy to shelter, repatriate and reintegrate TIP victims. Following funding approval, the IOM and Tenaganita signed a MOU regarding establishment of the shelter, and it is scheduled to commence operations in March 2006. Two NGOs maintain shelters that are available to foreign trafficking victims. One of the shelters provides in-house counseling, medical referrals to clinics and legal referrals to the Bar Council's Legal Aid Center. The shelter also works with foreign missions to arrange for translators and to facilitate repatriation for women trafficked to Malaysia. Other women's shelters in the country provide refuge, but have few additional resources for the special needs of trafficking victims. NGO relations with local authorities vary. Some frequently receive cooperation from law enforcement officials, but others experience greater difficulty. The MCA, WAO and Tenaganita provide a full range of services, including counseling, shelter, and repatriation assistance. The Bar Council and IFWL provide legal assistance. Foreign embassies and local NGOs report that cooperation with the federal police in Kuala Lumpur has generally been good. Outside of Kuala Lumpur, with other agencies such as Immigration, cooperation is less consistent.

¶13. HEROES (PARA 22)

(SBU) For the 2006 Trafficking in Persons Report the Embassy nominates Irene Fernandez, President of local NGO Tenaganita, for honor as an individual who has demonstrated an exceptional commitment to fighting TIP. Over the past several years, her work on behalf of both mistreated migrant workers and sexual trafficking victims in Malaysia has garnered her worldwide respect and support. Fernandez was arrested in March 1996 for publishing a report about detainee abuse and very poor sanitation conditions in the country's illegal migrant detention centers. Found guilty in October 2003 and sentenced to one year in jail, she appealed her case. Hers has become the longest-running court case in Malaysian history. In May 2005, her NGO Tenaganita published a video entitled "Breaking Labor" that included the tragic stories of several foreign victims of labor trafficking and abuse in Malaysia. During 2005, Tenaganita facilitated legal assistance and shelter for sexual trafficking victims. In December 2005, Fernandez traveled to Stockholm to accept the Right Livelihood Award, commonly known as the "Alternative Nobel Prize." And as of February 2006, in cooperation with the IOM and with USG funding, Tenaganita was poised to establish Malaysia's first dedicated TIP victim shelter and repatriate TIP victims to their home countries. Tenaganita has become the largest and most effective anti-TIP NGO in Malaysia, and this status is largely due to Fernandez' efforts. She has demonstrated considerable vision, courage and leadership in the face of the Malaysian government lawsuit. Her efforts have directly benefited hundreds of TIP victims, as well as influenced the GOM to improve its anti-TIP attitudes and actions.

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